

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

David John Miller,

Petitioner,

v.

David Shinn, et al.,

Respondents.

No. CV 19-02686-PHX-SPL

ORDER

The Court has before it, Petitioner's Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (Doc. 1), the Answer from the Respondents (Doc. 10), and the Petitioner's Reply. (Doc. 11) Additionally, the Court is in receipt of the Report and Recommendation of the Magistrate Judge (Doc. 14), Petitioner's Objections (Doc. 17), and Petitioner's Application for Certificate of Appealability from the District Court. (Doc. 18)

In the instant Petition, the Petitioner alleges: (1) the trial counsel failed to interview 2 witnesses that the Petitioner believed would have provided exculpatory information; (2 and 3) the trial counsel failed to object to testimonial hearsay and failed to object to the prosecutor's alleged misconduct during closing arguments; (4) the appellate counsel was ineffective because he failed to raise the prosecutor's alleged misconduct and that cumulative errors violated Petitioner's Sixth Amendment and due process rights. (Doc. 1 at 4-31)

A district judge "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b). When a party files a

1 timely objection to an R&R, the district judge reviews *de novo* those portions of the R&R
 2 that have been “properly objected to.” Fed. R. Civ. P. 72(b). A proper objection requires
 3 specific written objections to the findings and recommendations in the R&R. *See United*
 4 *States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003); 28 U.S.C. § 636(b) (1). It
 5 follows that the Court need not conduct any review of portions to which no specific
 6 objection has been made. *See Reyna-Tapia*, 328 F.3d at 1121; *see also Thomas v. Arn*, 474
 7 U.S. 140, 149 (1985) (discussing the inherent purpose of limited review is judicial
 8 economy). Further, a party is not entitled as of right to *de novo* review of evidence or
 9 arguments which are raised for the first time in an objection to the R&R, and the Court’s
 10 decision to consider them is discretionary. *United States v. Howell*, 231 F.3d 615, 621-622
 11 (9th Cir. 2000).

12 The Court has carefully undertaken an extensive review of the sufficiently
 13 developed record. The Petitioner’s objections to the findings and recommendations of the
 14 Magistrate Judge have also been thoroughly considered.

15 After conducting a *de novo* review of the issues and objections, the Court reaches
 16 the same conclusions reached by Judge Bibles. Having carefully reviewed the record, the
 17 Petitioner has presented arguments that appear to be unsupported conclusions devoid of
 18 merit. Furthermore, this Court also failed to find cumulative error that deprived the
 19 Petitioner of due process and Sixth amendment rights. The R&R will be adopted in full.
 20 Accordingly,

21 **IT IS ORDERED:**

22 1. That the Magistrate Judge’s Report and Recommendation (Doc. 14) is
 23 **accepted** and **adopted** by the Court;

24 2. That the Petitioner’s Objections (Doc. 17) are **overruled**;

25 3. That the Petitioner’s Application for Certificate of Appealability from the
 26 District Court (Doc. 18) is **denied** as moot.

27 4. That the Petition for Writ of Habeas Corpus (Doc. 1) is **denied** and this action
 28 is **dismissed with prejudice**;

